IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2007

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

WRIT PETITION NO.1996 OF 2007
and
M.P.No.1 & 2 of 2007

M.O.P. Iyengar Charities
rep. by its Secretary
153/72, Venkatrangam Pillai Street
Triplicane
Chennai - 600 005. ... Petitioner

Vs.

1. The Special Tahsildar
(Revenue Recovery)
C.M.W.S.S. Board, Area II
1, M.C. Road, Anna Poonga
Royapuram, Chennai - 600 021.

2. The Senior Accounts Officer
Area Office II
C.M.W.S.S. Board, 1, M.C. Road
Anna Poonga
Royapuram, Chennai - 600 021.

3. The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai - 600 003. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. P. Haridas
Senior Counsel
for Mr.Puran Khemka

For R1 & R2 : Mr. B. Mani

For R3 : Mr. T. Mathi

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O R D E R

This writ petition is listed today for admission and I heard the learned Senior Counsel appearing for the petitioner, Mr.B.Mani, learned counsel for respondent Nos.1 and 2 and Mr.T.Mathi, learned counsel for respondent No.3.

2. The prayer in this writ petition is for a Writ of Certiorarified Mandamus calling for the records of the first respondent dated 3.1.2007, being the distraint warrant notice bearing Sl.No.5626 in respect of premises bearing No.41, Bunder Street, Kothaval Chavadi, Chennai - 600 001, consequent to the demand contained in the impugned letter of the second respondent dated 10.10.2006 vide CMWSSB/Area II/R4/7498/2006 and the demand contained in intimation slip dated 14.8.2006 vide Sl.No.238 for CMC Bill No.02/030/1575/000000/1 and quash the same and forbear the respondents, their men, agents or any one acting under them or for them from in any manner attaching the property or for bringing for distraint auction properties (both movable and immovable) of the petitioner in the premises bearing Municipal Door No.41, Bunder Street, Kothaval Chavadi, Chennai - 600 001.

3. The case of the petitioner is as follows:-

The petitioner is a public and charitable trust, which owns the property bearing Door No.41, Bunder Street, Chennai-1. The petitioner has been regularly paying property, water and sewerage tax due to the said property to the authorities concerned. As per the provisions of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 (hereinafter referred to as the 'Act'), the respondents are entitled to levy water and sewerage tax. Under Section 34 of the said Act, the water tax shall not be more than 35% and the sewerage tax shall not be more than 15% of the property tax. For the purpose of levy of water and sewerage tax, the Chennai Metropolitan Water Supply and Sewerage Board (hereinafter referred to as the 'Board') has to arrive at the annual value of the property. Since, the Board has not arrived at the annual value, the Board has been adopting the annual value arrived at by the Corporation of Chennai for the purpose of assessment of levy, demand and collection of water and sewerage tax. The annual value fixed by the Corporation of Chennai was Rs.1,44,184/- and the property tax was collected by the Corporation of Chennai at Rs.17,230, per half year. The annual value was increased to Rs.2,87,524/- restrospectively with effect from 2/1998-1999 and consequently the property tax was revised to Rs.34,359/- per half year. The petitioner filed an appeal before the Taxation Appeals Tribunal, Corporation of Chennai, which reduced the annual value from Rs.2,87,524/- to Rs.2,16,271/- and consequently reduced the half yearly tax from Rs.34,359/- to Rs.25,844/- with effect from 2/1998-1999. With the

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result, the petitioner has been paying property tax of Rs.25,844/- per half year. Following the same, the petitioner paying the water tax of Rs.7569/- per half year to the Board. The water and sewerage tax were regularly remitted by the petitioner upto 1/2006-2007. While things are such, the respondents sent an intimation dated 14.8.2006, which was received by the petitioner on 6.9.2006 directing them to pay Rs.1,47,233/- towards water and sewerage tax and surcharges from 2/1999-2000 to 1/2006-2007, which is challenged in this writ petition.

4. The case of the respondent is that following the enhancement of property tax by the Corporation, the impugned communications were sent by the respondents 1 and 2 calling upon the petitioners to pay the tax amount at the enhanced rate.

5. Mr.P. Haridas, learned Senior counsel appearing for the petitioner submitted that the petitioner has sent a letter dated 25.9.2006 informing the respondent-Board that they have not received any communication from the Chennai Corporation increasing the annual value to Rs.4,10,974/- as referred to in the impugned arrears intimation slip dated 14.8.2006. While so, in the absence of any increase by the Corporation of Chennai demanding the enhanced rate of tax for water and sewerage is untenable in law. The petitioner by letter dated 25.09.2006 categorically stated that they have not received any communication from the Corporation about the enhancement of property tax, as referred to in the said order dated 14.08.2006, the alleged corresponding increase made by the Board is untenable besides that it is disproportionate and exorbitant, for which, no reply was given by the respondent-Board. The respondent-Board sent the distraint warrant notice dated 3.1.2007, which was received by the petitioner on 8.1.2007 wherein the petitioner was directed to pay arrears of Rs.1,67,495/- towards water and sewerage tax and surcharges within three days, which is unsustainable in law. In any event demanding such exorbitant rate of tax retrospectively with effect from 2/1999-2000 to 1/2006-2007 is exfacie illegal. The said distraint warrant notice was issued in total violation of the principles of natural justice and contravention of the statutory provisions. It is further submitted by the learned Senior counsel that in the absence of enhancement of property tax by the Corporation, it is not open to the respondents to enhance the water and sewerage tax, that too without granting opportunity.

6. On the above said contention, this Court heard Mr.B.Mani, learned standing counsel for respondent Nos.1 and 2 and Mr.T.Mathi, learned counsel for respondent No.3.

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7. The petitioner has enclosed in its typed set, the property tax book issued by the third respondent-Corporation for 1/2006-2007. The Corporation levied the half yearly tax of Rs.25,844/-, which is corresponding to the annual value of Rs.2,16,271/-. However, the respondents 1 and 2 in their communication dated 14.8.2006, arrived at the annual value at Rs.4,10,974/- without any basis. It is asserted by the learned Senior counsel appearing for the petitioner that the third respondent-Corporation has not enhanced the annual value till date. At this juncture, it is necessary to mention the argument of the learned Senior Counsel that the respondent-Board has not given any opportunity or notice prior to the impugned communications dated 14.8.2006, 10.10.2006 and 3.1.2007. It is also not in dispute that the petitioner's representation dated 25.9.2006, questioning the demand dated 14.08.2006 by the Board, has not yet been disposed of by the second respondent till date.

8. In view of the said facts, particularly, the grievance of the petitioner that the respondent has not afforded any opportunity and the fact that the property tax stated to have not increased, this Court is of the considered view that the petitioner is entitled to the relief sought for. Accordingly, the impugned orders dated 14.8.2006, 10.10.2006 and 3.1.2007 are quashed. The writ petition is allowed as prayed for. Consequently, connected miscellaneous petition are closed. No costs.

Kb

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Special Tahsildar
   (Revenue Recovery)
   C.M.W.S.S. Board, Area II
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   Royapuram, Chennai - 600 021.

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3. The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai - 600 003.

+ one cc to Mr.Puran Khemka, Advocate sr no. 22575
+ one cc to Mr. B. Mani, Advocate sr no. 23006

SR(CO)
NM(20.04.07)

W.P.No.1996 of 2007

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